

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RSI HOME PRODUCTS, INC.	:	
	:	
RSI HOME PRODUCTS	:	
MANAGEMENT, INC.	:	
	:	
and	:	C.A. No. 05-722-GMS
	:	
RSI HOME PRODUCTS SALES, INC.,	:	
	:	
Plaintiffs,	:	JURY TRIAL DEMANDED
	:	
v.	:	
	:	
TAN U.S. GROUP, INC.	:	
	:	
Defendant.	:	

SCHEDULING ORDER

This _____ day of _____ 2006, the Court having conducted an initial Rule 16 scheduling and planning conference pursuant to Local Rule 16.2(b) on March 29, 2006 and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation or binding arbitration;

IT IS ORDERED that:

1. **Rule 26(a) Initial Disclosures.** The parties will make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) on April 28, 2006.
2. **Joinder of other Parties and Amendment of Pleadings.** All motions to join other parties and amend the pleadings shall be filed on or before January 26, 2007.
3. **Reliance Upon Advice of Counsel.** Defendant shall inform plaintiffs whether it intends to rely upon advice of counsel as a defense to willful infringement no later than January 12, 2007. If defendant elects to rely on advice of counsel as a defense to willful infringement,

defendant shall produce any such opinions on which defendant intends to rely to plaintiff no later than _____, 200__.

4. **Markman Claim Construction Hearing.** A *Markman* claim construction hearing shall be held on December 21, 2006 at 10:00 a.m. The *Markman* hearing is scheduled for a half-day with each side having an equal amount of time. On September 15, 2006, plaintiffs shall provide defendant with their claim construction chart. On September 29, 2006, defendant shall provide plaintiffs with its claim construction chart. The parties shall meet and confer by October 6, 2006 regarding narrowing and reducing the number of claim construction issues. On or before October 13, 2006 the parties shall submit a Final Joint Claim Chart which shall include citations to intrinsic evidence, including a joint appendix containing the relevant portions of the prosecution history of the patent-in-issue. The parties shall exchange opening claim construction briefs on October 27, 2006 and the answering claim construction briefs on November 17, 2006.

5. **Discovery.** All fact discovery in this case shall be initiated so that it will be completed on or before March 23, 2007 (or 60 days after the Court issues its *Markman* order). Expert discovery in this case shall be initiated so that it will be completed on or before May 25, 2007.

a. **Discovery Disputes.** Should counsel find they are unable to resolve a discovery matter, the party seeking the relief shall contact chambers at (302) 573-6470 to schedule a telephone conference. Not less than forty-eight hours prior to the teleconference, the parties shall file with the court, via electronic means (CM/ECF), a **joint, non-argumentative** letter agenda not to exceed two (2) pages outlining the issue(s) in dispute. A sample letter can be located on this court's website at www.ded.uscourts.gov. Should the court find further briefing necessary upon conclusion of the telephone conference, unless otherwise directed, the party

seeking relief to file with the court a **TWO PAGE LETTER**, exclusive of exhibits, describing the issues in contention. The responding party shall file within five (5) days from the date of service of the opening letter an answering letter of no more than **TWO PAGES**. The party seeking relief may then file a reply letter of no more than **TWO PAGES** within three (3) days from the date of service of the answering letter.

6. **Confidential Information and Papers filed under Seal**. Should counsel find it will be necessary to apply to the court for a protective order specifying terms and conditions for the disclosure of confidential information, they should confer and attempt to reach an agreement on a proposed form of order and submit it to the court within 10 days from the date of this order. When filing papers under seal, counsel should deliver to the Clerk an original and two copies of the papers.

If after making a diligent effort the parties are unable to agree on the contents of the joint proposed protective order, then they shall follow the dispute resolution process outlined in paragraph 5(a).

7. **Settlement Conference**. Pursuant to 28 U.S.C. §636, this matter is referred to the United States Magistrate for the purpose of exploring the possibility of a settlement. If the parties agree that the possibility of settlement may be enhanced by such referral, the parties shall contact Magistrate Judge Thyng to schedule a settlement conference with counsel and clients.

8. **Summary Judgment Motions**. Prior to filing any summary judgment motion, the parties must submit letter briefs seeking permission to file the motion. The opening letter brief shall be no longer than five (5) pages and shall be filed with the Court no later than June 11, 2007. Answering letter briefs shall be no longer than five (5) pages and filed with the court no later than June 18, 2007. Reply letter briefs shall be no longer than three (3) pages and filed with

the Court on or before June 22, 2007. The Court shall hold a tele-conference to hear argument and to determine whether the filing of any summary judgment motion will be permitted on June 29, 2005 at 8:30 a.m. Plaintiffs are to initiate the call. **Unless the Court directs otherwise, no letter requests to file a motion for summary judgment may be filed at a time before the dates set forth in paragraph 8.**

9. **Case Dispositive Motions.** All case dispositive motions and an opening brief and affidavits, if any, in support of the motions shall be served and filed on or before July 13, 2007. The answering brief shall be served and filed on or before August 3, 2007. The reply brief shall be served and filed on or before August 10, 2007. Any request for extensions of time as set forth in this Scheduling Order must be accompanied by an explanation or your request will be denied.

10. **Applications by Motion.** Except as provided in this Order or for matters relating to scheduling, any application to the Court shall be by written motion filed, via electronic means (CM/ECF). Unless otherwise requested by the Court, counsel shall **not** deliver copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

11. **Oral Argument.** If the Court believes that oral argument is necessary, the Court will schedule a hearing Pursuant to Local Rule 7.1.4.

12. **Pretrial Conference.** On October 4, 2007 the Court will hold a Pretrial Conference in Chambers with counsel beginning at 10:00 a.m. Unless otherwise ordered by the Court, the parties should assume that filing the Joint Pretrial Order satisfies the pretrial disclosure requirement in Federal Rule of Civil Procedure 26(a)(3). Thirty (30) days before the Joint Proposed Pretrial Order is due, plaintiff's counsel shall forward to defendant's counsel a draft of the pretrial order containing the information plaintiff proposes to include in the draft.

Defendant's counsel shall, in turn, provide to plaintiff's counsel any comments on the plaintiff's draft as well as the information defendant proposes to include in the proposed pretrial order. Motions *in limine*/Daubert motions: No party shall file more than ten (10) motions *in limine*/Daubert motions. Opening briefs on all motions *in limine*/Daubert motions shall be filed by August 1, 2007. Answering briefs shall be filed on or before August 14, 2007. Reply briefs are to be filed on or before August 21, 2007. Opening and answering briefs shall not exceed five (5) pages and reply briefs shall not exceed three (3) pages. The parties shall file with the court the Joint Proposed Final Pretrial Order with the information required by the form of Final Pretrial Order which accompanies this Scheduling Order on or before September 4, 2007.

13. **Trial**. This matter is scheduled for a 7 day jury trial beginning at 9:00 a.m. on November 26, 2007.

14. **Scheduling**. The parties shall contact chambers, at (302) 573-6470, only in situations where scheduling relief is sought, and only then when ALL participating counsel is on the line for purposes of selecting a new date.

United States District Judge